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8 T AND S DVBE, INC.

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 THE BOARD OF TRUSTEES, in their capacities as Trustees of the LABORERS )  
13 HEALTH AND WELFARE TRUST )  
14 FUND FOR NORTHERN CALIFORNIA; )  
15 LABORERS VACATION-HOLIDAY )  
16 TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION )  
17 TRUST FUND FOR NORTHERN CALIFORNIA; and LABORERS TRAINING AND RETRAINING TRUST )  
18 FUND FOR NORTHERN CALIFORNIA, )  
19 Plaintiff )  
20 v. )  
21

22 T AND S DVBE, INC., a California Corporation,

23 Defendant.  
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25 1. Defendant T AND S DVBE, INC. (the “Defendant”) submits its Answer to the  
26 “Complaint” filed by Plaintiff THE BOARD OF TRUSTEES, in their capacities as Trustees of the  
27 LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA;  
28 LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA;  
LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; and LABORERS

1 TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA, (the  
2 "Plaintiff"), as follows:

3 **I. INTRODUCTION**

4       2. In response to Paragraph 1 of the Complaint, Defendant admits that this action was  
5 commenced by Plaintiff, and further admits that, through this action, Plaintiff seeks to collect  
6 monies it claims are owed, pursuant to Section 502 of the Employee Retirement Income Security  
7 Act, as amended (ERISA), 29 U.S.C§1132, and section 301 of the Labor Management Relations  
8 Act (LMRA), 29 U.S.C. § 185. Defendant does not dispute that monies are owed, rather it is the  
9 amount of monies owed and the tabulation method used (as it applies to large category of workers)  
10 that are in dispute.

11 **II. JURISDICTION AND VENUE**

12       3. In response to Paragraph 1 of the Complaint, Defendant admits the allegations and  
13 averments contained in Paragraph 1.

14 **III. INTRADISTRICT ASSIGNMENT**

15       4. Defendant admits the allegations and averments contained in Paragraph 1 of the  
16 Complaint.

17 **VI. ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

18       5. Defendant admits the allegations and averments contained in Paragraph 2 of the  
19 Complaint.

20       6. Defendant admits the allegations and averments contained in Paragraph 3 of the  
21 Complaint.

22       7. Defendant admits the allegations and averments contained in Paragraph 4 of the  
23 Complaint.

24       8. Defendant admits the allegations and averments contained in Paragraph 5 of the  
25 Complaint.

26 **V. First Claim For Relief, Breach of Contract Claim**

27       9. Defendant reincorporates by reference its responses herein to Plaintiff's allegations  
28 contained by reference in Paragraph 6 of the Complaint.

1       10. Defendant admits the allegations and averments contained in Paragraph 7 of the Complaint  
2 to the extent Plaintiff conducted an audit, and reached its conclusion regarding monies owed to it.  
3 As to the accuracy of said audit, Defendant lacks knowledge or information sufficient to form a  
4 belief as to the final accuracy of said audit, and on that basis denies such allegations.

5       11. Defendant admits the allegations and averments contained in Paragraph 8 to the extent  
6 Plaintiff conducted an audit, and reached its conclusion regarding monies owed to it and made a  
7 written demand to Plaintiff. As to the accuracy of said audit, Defendant lacks knowledge or  
8 information sufficient to form a belief as to the final accuracy of said audit, and on that basis  
9 denies such allegations.

10                   **VI. Second Claim For Relief, Actual Damages for Breach of Contract Claim**

11       12. Defendant reincorporates by reference its responses herein to Plaintiff's allegations  
12 contained by reference in Paragraph 9 of the Complaint.

13       13. Defendant admits the allegations and averments contained in Paragraph 10 of the  
14 Complaint, but denies that Plaintiff's audit is entirely accurate. Given the large amount of  
15 employees and length of years at issue, Plaintiff's audit has produced a higher number than  
16 Defendant believes is owed. Defendant lacks knowledge or information sufficient to form a belief  
17 as to the final accuracy of said audit, and on that basis denies such allegations.

18                   **VII. Third Claim For Relief, Audit**

19       14. Defendant reincorporates by reference its responses herein to Plaintiff's allegations  
20 contained by reference in Paragraph 11 of the Complaint.

21       15. Defendant admits the allegations and averments contained in Paragraph 12 of the  
22 Complaint, but denies that Plaintiff's audit is entirely accurate. Given the large amount of  
23 employees and length of years at issue, Plaintiff's audit has produced a higher number than  
24 Defendant believes is owed. Defendant lacks knowledge or information sufficient to form a belief  
25 as to the final accuracy of said audit, and on that basis denies such allegations.

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### **VIII. Affirmative Defenses**

3       16. AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE COMPLAINT, Defendant  
4 alleges the Complaint fails to state a claim against Defendant upon which the relief can be granted.

5       17. AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
6 Defendant alleges that Plaintiff is barred in part or in whole by the applicable statute(s) of  
7 limitations.

8       18. AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE COMPLAINT, Defendant  
9      alleges that Plaintiff are estopped from alleging the matters set forth in said Complaint.

## IX. Prayer For Relief

WHEREFORE, Defendant requests relief as follows:

1. That the Plaintiff takes nothing by the Complaint;
2. For the costs of suit herein, including any reasonable attorneys' fees permitted by law; and
3. For such other further relief as this Court may deem proper.

Dated: August 16, 2021

Respectfully Submitted,

/s/ Ory Cross  
By: Valor Legal, P.C.  
Ory Cross  
Attorneys for Defendant  
T AND S DVBE, INC.